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MATHIVANAN MAHATHEVAN v. PP

HIGH COURT MALAYA, MELAKA
VAZEER ALAM MYDIN MEERA J
[CRIMINAL APPEAL NO: MA-44-07-05-2017]
7 SEPTEMBER 2017

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CRIMINAL PROCEDURE: *Revision – Revision of conviction and sentence – Applicant charged under s. 6 of Corrosive and Explosive Substances and Offensive Weapons Act 1958 – Charge amended from s. 6 to s. 4 – Amended charge did not disclose offence under s. 4 – Facts of case and evidence tendered did not support amended charge – Applicant pleaded guilty to amended charge and sentenced to four years imprisonment and two strokes of whip – Whether charge defective – Whether plea of guilty ought to have been rejected – Whether there was failure of justice – Criminal Procedure Code, s. 323*

C

CRIMINAL PROCEDURE: *Charge – Defective charge – Applicant charged under s. 6 of Corrosive and Explosive Substances and Offensive Weapons Act 1958 – Charge amended from s. 6 to s. 4 – Amended charge did not disclose offence under s. 4 – Applicant pleaded guilty to amended charge – Whether plea of guilty ought to have been rejected – Whether charge defective – Whether plea of guilty ought to have been rejected – Whether there was failure of justice*

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The applicant was charged at the Sessions Court with two offences under (i) s. 436 of the Penal Code ('the first charge'); and (ii) s. 6 of the Corrosive and Explosive Substances and Offensive Weapons Act 1958 ('the Act') ('the second charge'). He claimed trial to both charges and was initially represented by counsel. However, when the applicant's counsel later discharged himself, the applicant, who was unrepresented, pleaded guilty on both counts when the cases were read and the charges were re-read and explained to him. The prosecution applied to amend the second charge from one under s. 6 to that of s. 4 of the Act and the application was allowed by the Sessions Court Judge ('the SCJ'). The applicant pleaded guilty to the charge under s. 4 of the Act ('the amended charge') and the first charge. The SCJ rejected the plea of guilty in respect of the first charge and proceeded with the amended charge. When the facts of case were read and explained again to the applicant, the latter was said to have understood and admitted to them. After recording a conviction under the amended charge and hearing submissions on sentencing, the SCJ sentenced the applicant to four years imprisonment and two strokes of the whip. In the present application for criminal revision under s. 323 of the Criminal Procedure Code ('the CPC'), the applicant sought for examination of the record of proceedings in respect of the amended charge. According to the applicant, the plea ought to have been rejected as (i) the amended charge did not disclose an offence under s. 4 of the Act; and (ii) the facts of case and evidence tendered by the prosecution did not support the amended charge.

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Held (setting aside conviction and sentence; and ordering retrial):

(1) The main ingredients of an offence under s. 4 of the Act are (i) unlawfully and maliciously using or attempting to use any corrosive substance or offensive weapon for the purpose of causing hurt; and (ii) causing or attempting to cause by any explosive substance an explosion of a nature likely to cause hurt. Any charge under s. 4 of the Act must allude to and contain either one of these two essential elements to complete the offence. However, nowhere in the amended charge were any of these allegations of fact alluded to. Instead, the body of the amended charge referred to unlawful possession of offensive weapons as originally-charged, which would be an offence under s. 6 of the Act. The amended charge was therefore defective and a nullity. The absence of the essential elements constituting a charge under s. 4 of the Act would affect the legality of the charge. (paras 15 & 16)

(2) The facts of case must reflect and support the charge. The purpose for which the facts of case is tendered by the prosecution following a plea of guilty is for the court to satisfy itself that the facts constitute the offence charged. However, the facts of case did not support the charge under s. 4 of the Act as framed in the amended charge. There were glaring contradictions in terms of date, time and place. The entirety of the facts of case referred to the first charge and was absolutely unconnected to the amended charge. (paras 25, 26 & 27)

(3) There could not be a plea of guilty to a charge that was so fundamentally defective. A plea of guilty to an unknown offence was no plea at all. The SCJ ought to have rejected the plea of guilty and proceeded to set the matter down for trial so that evidence may be adduced. The acceptance of the plea of guilty under such circumstances would amount to a failure of justice. (paras 21, 26 & 27)

Case(s) referred to:

Chin Ban Keat v. Rex [1949] 1 LNS 14 HC ***(refd)***
Chong Chee Pak v. PP [1948] 1 LNS 94 ***(refd)***
Emperor v. Nasrullah & Others AIR 1928 All 287 ***(refd)***
Jagar Singh v. PP [1936] 1 LNS 25 HC ***(refd)***
Khor Swee Kim v. PP [1953] 1 LNS 37 HC ***(refd)***
Lee Swee Tee v. PP [1960] 1 LNS 58 HC ***(refd)***
Liaw Kwai Wah & Anor v. PP [1987] 1 CLJ 35; [1987] CLJ (Rep) 163 SC ***(refd)***
Liew Cheok Hin v. R [1956] MLJ 131 ***(refd)***
Lim Beh & Ors v. Opium Farmer [1842] 3 Ky 110 ***(refd)***
Maung Min Aung & Anor v. PP [2001] 5 CLJ 160 HC ***(refd)***
PP v. Abdul Aziz [1978] 1 LNS 148 HC ***(refd)***
PP v. Chung Tshun Tin & Ors [2007] 10 CLJ 527 HC ***(refd)***
PP v. Margarita B Cruz [1987] 1 LNS 129 HC ***(refd)***
PP v. Raymond Chia Kim Chwee & Anor & Another Case [1985] 2 CLJ 457; [1985] CLJ (Rep) 260 FC ***(refd)***

A *PP v. Tan Sri Eric Chia Eng Hock [2005] 6 CLJ 355 HC* ***(refd)***
Quek Ching Kim v. Reg [1955] 1 LNS 104 HC ***(refd)***
Re Soo Leot [1955] 1 LNS 127 HC ***(refd)***
Sia Cheng Soon & Anor v. Tengku Ismail Tengku Ibrahim [2008] 5 CLJ 201 FC ***(refd)***
Wong Siak Fon v. PP [1972] 1 LNS 182 HC ***(refd)***
Yoh Meng Heng v. PP [1969] 1 LNS 210 HC ***(refd)***
B *Zainal Haji Ali v. PP [1985] 2 MLJ 436 SC* ***(refd)***

Legislation referred to:
Corrosive And Explosive Substances And Offensive Weapons Act 1958, ss. 4, 6
Criminal Procedure Code, ss. 152(1), 323
Penal Code, ss. 6, 436

C *For the appellant - Markhan Singh; M/s Markhan Singh & Assocs*
For the respondent - Mohd Shazrill Ghazali; State Legal Advisor, Melaka

Reported by Najib Tamby

D **JUDGMENT**

Vazeer Alam Mydin Meera J:

[1] This is a criminal revision pursuant to s. 323 of the Criminal Procedure Code (Revised 1999). Section 323 reads:

E (1) A Judge may call for and examine the record of any proceeding before any subordinate Criminal Court for the purpose of satisfying himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of that subordinate Court.

F **[2]** The powers conferred by s. 323 of the CPC is paternalistic or supervisory in nature and is to be used primarily to correct any miscarriage of justice. See: *Emperor v. Nasrullah & Others* AIR [1928] All 287. All criminal and *quasi*-criminal proceedings in the subordinate courts fall within the scope of the revisionary jurisdiction of the High Court, which is wider in scope than its powers on appeal.

G **[3]** In *Liaw Kwai Wah & Anor v. PP* [1987] 1 CLJ 35; [1987] CLJ (Rep) 163; [1987] 2 MLJ 69 (FC) Abdul Hamid CJ (Malaya) (as he then was) observed:

H Section 31 of the Courts of Judicature Act 1964 confers on the High Court, in respect of criminal proceedings and matters in the subordinate courts, the powers of revision. And section 323(i) Criminal Procedure Code (the Code), empowers a Judge to call for and examine the record of any proceeding before any inferior criminal court for the purpose of satisfying himself as to the correctness, legality or propriety of any finding, sentence, or order recorded or passed.

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> Basically, the duty lies with the High Court to see that the criminal law is properly administered by an inferior court.
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> The Judge's duty is to satisfy himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed and as to the regularity of any proceedings of such inferior court. Where, for instance, a convicted person has scrupulous objection to invoke the jurisdiction of a High Court, either on a question of legality of conviction or error of law concerning the conviction or sentence, the Judge ought to call for and examine the record with a view to exercising the revisionary power to correct a miscarriage of justice.

See also the case of *PP v. Tan Sri Eric Chia Eng Hock* [2005] 6 CLJ 355; [2006] 4 MLJ 697.

[4] The revisionary powers of the High Court are exercisable at the discretion of the court according to the exigencies of each case. See: *Re Soo Leot* [1955] 1 LNS 127; [1956] MLJ 54; *Sia Cheng Soon & Anor v. Tengku Ismail Tengku Ibrahim* [2008] 5 CLJ 201; [2008] 3 MLJ 753 (FC). Further, the power being discretionary, high authorities have held that it must be exercised judiciously and within limits in accordance to the spirit of the legislation.

[5] In deciding this application, I have taken guidance from these pronouncements of the apex court. The applicant moved *vide* notice of motion dated 29 May 2017 (encl. 1) for this court to call for and examine the record of proceedings in respect of an Arrest Case No: 62-02-02-2016 at the Alor Gajah Sessions Court. In that Arrest Case No: 62-02-02-2016, the applicant was convicted of an offence under s. 4 of the Corrosive And Explosive Substances And Offensive Weapons Act 1958 (Revised 1988) ("the Act") after he had pleaded guilty to the charge. The applicant now states that the plea ought to have been rejected as firstly the charge as framed did not disclose an offence under s. 4 of the Act, and secondly the facts of case and evidence tendered by the prosecution did not support a charge under s. 4 of the Act.

[6] Having considered the charge, the notes of proceedings and evidence as presented by the prosecution, and further having considered the submissions of counsel for the applicant and the learned DPP, I set aside the conviction and sentence and ordered a retrial for the following reasons.

[7] The applicant was on 10 February 2016 charged at the Alor Gajah Sessions Court with two offences, namely:

(a) a charge under s. 436 of the Penal Code (Arrest Case No: 62-01-02-2016); and

(b) a charge under s. 6 of the Act (Arrest Case No: 62-02-02-2016).

[8] The original charge under s. 6 of the Act for the Arrest Case No: 62-02-02-2016 read:

> Bahawa kamu pada 15/09/2015 jam lebih kurang 10.30 malam di tepi Lebuh AMJ berhampiran dengan hentian rehat dan rawatan Rembia, Alor Gajah, dalam Daerah Alor Gajah di dalam Negeri Melaka telah memiliki senjata berbahaya iaitu (8) buah botol kaca bersumbukan kertas yang mengandungi cecair petrol dan dengan itu kamu telah melakukan suatu kesalahan yang boleh di hukum di bawah seksyen 6 Akta Bahan Kakisan dan Letupan dan Senjata Berbahaya 1958.
>
> Hukuman: Penjara selama tempoh yang boleh sampai sepuluh tahun, dan boleh juga dikenakan denda.

[9] The applicant claimed trial to both charges and was initially represented by counsel. However, the applicant's counsel subsequently discharged himself and the applicant was unrepresented. On 26 September 2016 when the cases were called and the charges were reread and explained in Tamil, the applicant whilst being unrepresented changed his plea to that of guilty on both counts. The learned DPP who appeared for the respondent then asked for the matter to be stood down to prepare the facts of case.

[10] When both the matters were recalled in the afternoon, the learned DPP made an oral application to amend the charge in respect of Arrest Case No: 62-02-02-2016 from one under s. 6 to that of s. 4 of the Act. That oral application is recorded in the notes of proceedings as follows:

> TPR:
>
> Pohon untuk pindaan lisan terhadap kes 62-02-02-2016 dan juga pindaan terhadap hukuman.
>
> Pindaan iaitu dari seksyen 6 kepada seksyen 4 Akta Senjata dan Kakisan Letupan dan Senjata Berbahaya 1958. Hukuman sehingga 7 tahun dan hendaklah disebat.
>
> Pertuduhan bagi kedua-dua kes dibaca semula dalam Bahasa Tamil – dibacakan oleh Jurubahasa Tamil – En Kumaran.

[11] The notes of proceedings does not show whether the learned Sessions Judge did indeed allow the amendment as sought. However, learned counsel for the applicant states that the Sessions Court proceeded thereon as if the charge had been orally amended to that of s. 4 of the Act. Learned counsel submits that the charge as amended would now read as follows:

> Bahawa kamu pada 15/09/2015 jam lebih kurang 10.30 malam di tepi Lebuh AMJ berhampiran dengan hentian rehat dan rawatan Rembia, Alor Gajah, dalam Daerah Alor Gajah di dalam Negeri Melaka telah memiliki senjata berbahaya iaitu (8) buah botol kaca bersumbukan kertas yang mengandungi cecair petrol dan dengan itu kamu telah melakukan suatu kesalahan yang boleh dihukum di bawah seksyen ~~6~~ 4 Akta Bahan Kakisan dan Letupan dan Senjata Berbahaya 1958.
>
> Hukuman: Penjara selama tempoh yang boleh sampai ~~sepuluh~~ tujuh tahun, dan ~~bolch juga dikenakan denda~~ dan hendaklah disebat.

The learned DPP who appeared at this revision hearing conceded that this is how the amended charge would have read.

[12] The notes of proceedings shows that thereafter the applicant pleaded guilty to the amended charge under s. 4 of the Act as well as the charge under s. 436 of the Penal Code. Then, the learned DPP tendered the facts of case for both cases, ie, both the charges. In respect of the facts of case for Arrest Case No: 62-01-02-2016, the applicant did not agree to para. 4 of the facts of case. The learned Sessions Judge therefore, quite correctly, rejected the plea of guilty in respect of the Arrest Case No: 62-01-02-2016, ie, the charge under s. 436 of the Penal Code and adjourned it for trial. The relevant part of the notes of proceedings states as follows:

TPR:

Pohon dikemukakan Fakta Kes bagi 62-01-02/2016 dan dibacakan dalam Bahasa Tamil oleh Jurubahasa.

OKT tidak mangaku fakta kes para 4.

Mahkamah:

Ini pengakuan bersyarat – TPR bersetuju.

Mahkamah:

Tidak menerima pengakuan salah OKT dan menetapkan tarikh bicara.

Mahkamah:

7 dan 8/11/2016 (bicara) bagi kes 62-01-02/2016.

[13] The Sessions Judge then proceeded with Arrest Case No: 62-02-02-2016, ie, the amended charge under s. 4 of the Act. The facts of case was once again read and explained to the applicant in Tamil. The notes of proceedings states that the applicant understood and admitted the facts of case. The case exhibits were then tendered and marked. The relevant part of the notes of proceedings reads:

TPR:

Pohon fakta kes 62-02-02/2016 dibacakan dalam Bahasa Tamil oleh Jurubahasa En Kumaran.

Fakta kes diakui oleh OKT dan difahami.

Fakta kes ditanda sebagai P-1.

Repot Polis pengadu Rumbia 656/16 – P-2.

– Tangkapan dan rampasan

Search List – P-3.

Gambar tempat kejadian, barang kes dan kereta – P-4 (1-37)

– gambar diakui.

A Akuan serah menyerah IPK kepada IO – P-5

– untuk kesan swap kesan terbakar.

Resit Kimia – P-6

Laporan Kimia – P-7

B Barang kes tidak dapat dikemukakan – IO bertugas

Pohon dirujuk P-4 18-21 – sebagai kereta

P-4 28-37 – botol Molotov cocktail

OKT tiada bantahan dengan gambar sahaja.

C TPR:

Itu sahaja ekshibit untuk dikemukakan.

Mahkamah:

D Setelah meneliti segala fakta kes, dokumen dan ekshibit yang dikemukakan, Mahkamah dengan ini menyabitkan OKT bersalah di bawah pertuduhan sek. 4 Akta Kakisan Letupan dan Senjata Berbahaya 1958.

The learned Sessions Judge recorded a conviction under s. 4 of the Act and then proceeded to hear submissions on sentencing. The applicant was then E sentenced to four years imprisonment and two strokes of the whip.

[14] Now I come to the present revision exercise. Having considered the submissions of the learned DPP and learned counsel for the applicant, I am in agreement with submissions of counsel for the applicant that there are F grave errors in proceedings that warrant a setting aside of the conviction and ordering a retrial.

[15] Firstly, I find that the amended charge is defective and a nullity, as it does not disclose an offence under s. 4 of the Act. Now, s. 4 of the Act provides:

G Any person who unlawfully and maliciously uses or attempts to use any corrosive substance or offensive weapon for the purpose of causing hurt, or causes or attempts to cause by any explosive substance an explosion of a nature likely to cause hurt, shall, whether any hurt has actually been caused or not, be guilty of an offence and shall on conviction be liable to imprisonment for a term not exceeding seven years, and to whipping.

H Hence, the main ingredients of an offence under s. 4 of the Act are:

(i) unlawfully and maliciously using or attempting to use any corrosive substance or offensive weapon for the purpose of causing hurt; or

I (ii) causing or attempting to cause by any explosive substance an explosion of a nature likely to cause hurt.

Therefore, any charge under s. 4 of the Act must allude to and contain either one of these two essential elements to complete the offence. Now, nowhere in the amended charge are any of these allegations of fact alluded to. The body of the amended charge still refers to unlawful possession of offensive weapons as originally charged, ie, unlawful possession of eight bottles of Molotov Cocktail, which would be an offence under s. 6 of the Act.

[16] The original charge was under s. 6 of the Act, which provides that:

> (1) Any person who in any public road or place carries or has in his possession or under his control any offensive weapon otherwise than with lawful authority or for a lawful purpose shall be guilty of an offence and on conviction be liable to imprisonment for a term of not less than five years and not more than ten years, and to whipping.

Thus, it is clear that the amended charge does not disclose an offence under s. 4 of the Act, ie, the unlawful use or attempted use of corrosive substance or offensive weapon for the purposes of causing hurt, but rather one of possession of an offensive weapon in a public place, that is:

> ... memiliki senjata berbahaya iaitu (8) buah botol kaca bersumbukan kertas yang mengandungi cecair petrol ...

The mere possession of a corrosive substance or offensive weapon in a public place would not constitute an offence under s. 4 of the Act. Thus, the absence of the essential elements constituting a charge under s. 4 of the Act would affect the legality of the charge.

[17] The importance of properly framing the charge cannot be understated. Section 152(1) of the CPC requires every charge to clearly state the offence with which the accused is charged. There is a specific duty imposed on the prosecution to frame the charge with sufficient particulars so that the accused is given adequate notice. See: *PP v. Raymond Chia Kim Chwee & Anor & Another Case* [1985] 2 CLJ 457; [1985] CLJ (Rep) 260; [1985] 2 MLJ 436 (SC); *PP v. Chung Tshun Tin & Ors* [2007] 10 CLJ 527; [2008] 1 MLJ 559.

[18] In *Lim Beh & Ors v. Opium Farmer* [1842] 3 Ky 110 the accused was convicted on a charge framed as 'infringing the Opium Regulation'. The accused appealed *inter alia* on grounds that the charge was vague. In allowing the appeal and setting aside the conviction, the court held:

> If there be one principle of criminal law and justice clearer and more obvious than all others, it is that the offence imputed must be positively and precisely stated, so that the accused may certainly know with what he is charged and may be prepared to answer the charge the best way.

This principle was reiterated in *Liew Cheok Hin v. R* [1956] MLJ 131 by Taylor J in the following terms:

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> The fundamental principle is that the offence must be stated with sufficient precision to enable the accused to meet the charge. As regards cheating it is specifically enacted by section 153 that the manner in which the victim was cheated must be set out. It is the duty of the Court to scrutinise the charge at the commencement of every summary trial.

B See also the cases of *Jagar Singh v. PP* [1936] 1 LNS 25; [1936] MLJ 92 and *PP v. Margarita B Cruz* [1987] 1 LNS 129; [1988] 1 MLJ 539.

[19] Again in *Wong Siak Fon v. Public Prosecutor* [1972] 1 LNS 182; [1972] 1 MLJ 203 Lee Hun Hoe J (as he then was) held that in a cheating charge it was necessary to particularise deception and the failure to do so would C amount to an irregularity that affects the legality of the charge, thus rendering the charge a nullity. The learned judge further held that such an irregularity affects the legality of the conviction resulting in a failure of justice. Further in *Yoh Meng Heng v. Public Prosecutor* [1969] 1 LNS 210; [1970] 1 MLJ 14 Ajaib Singh J (as he then was) held that where the charge is defective for want D of the essential and material particulars of the offence, that charge as it stands cannot be sustained.

[20] Thus, in *Quek Ching Kim v. Regina* [1955] 1 LNS 104; [1956] 1 MLJ 54, the appeal against conviction was allowed in a gaming case because the charge as worded did not disclose any offence under s. 4(c) of the Common E Gaming Houses Ordinance. Similarly, in *Lee Swee Tee v. Public Prosecutor* [1960] 1 LNS 58; [1960] 1 MLJ 161 the court held that the charge was bad in law since it disclosed no offence, and the trial and consequent conviction was a nullity. See also the case of *Chong Chee Pak v. Public Prosecutor* [1948] 1 LNS 94; [1948-49] MLJ Supp 45.

F **[21]** In applying the legal principles in these case authorities to the facts of the instant case, I find that the amended charge does not disclose an offence under s. 4 of the Act as the essential elements of the offence are not disclosed and therefore the charge is a nullity. Thus, there cannot be a plea of guilty to a charge that is so fundamentally defective. A plea of guilty to an unknown G offence is no plea at all. See the cases of *Khor Swee Kim v. PP* [1953] 1 LNS 37; [1953] MLJ 117 and *Maung Min Aung & Anor v. PP* [2001] 5 CLJ 160; [2001] 5 MLJ 140.

[22] Thus, in any criminal proceeding it is incumbent upon a Magistrate or Sessions Judge, as the case may be, to ensure that the accused person does H not plead guilty to improper charges or to charges that do not disclose an offence, as in such cases the entire proceedings will be a nullity. See: *Public Prosecutor v. Abdul Aziz* [1978] 1 LNS 148; [1978] 2 MLJ 155.

[23] In the premise of the foregoing, I would have no option but to exercise my powers of revision to set matters right. And in that regard the finding of I guilt by the learned Sessions Judge for an offence under s. 4 of the Act, and the ensuing record of conviction and sentence, must be set aside.

[24] The second unsatisfactory feature of the case is this. The notes of proceedings states that the facts of the case for the Arrest Case No: 62-02-02-2016 was read and explained to the applicant and marked as exh. P1. However, learned counsel for the applicant submits that what was read to the applicant was in fact the facts of case for Arrest Case No: 62-01-02-2016 and not that of Arrest Case No: 62-02-02-2016, for there was only one set of facts of case tendered for both cases. When the documents are scrutinised, it is evident that the prosecution only tendered one set of facts of case (P1), for both Arrest Case No: 62-01-02-2016 and Arrest Case No: 62-02-02-2016.

[25] It is well settled law that the facts of case must reflect and support the charge. The purpose for which the facts of case is tendered by the prosecution following a plea of guilty is for the court to satisfy itself that the facts constitute the offence charged. See: *Chin Ban Keat v. Rex* [1949] 1 LNS 14; [1949] MLJ 297 per Jobling J. This was reiterated by Syed Agil Barakhbah J (as he then was) in *Public Prosecutor v. Abdul Aziz* [1978] 1 LNS 148; [1978] 2 MLJ 155 in the following words:

> The aim of the court is to record the facts alleged by the prosecuting officer and admitted by the accused in order to satisfy itself that they constitute the offence charged. This can be satisfactorily achieved by a statement from the prosecuting officer followed by an admission by the accused.

Thus, in *PP v. Margarita B Cruz* [1987] 1 LNS 129; [1988] 1 MLJ 539 KC Vohrah J (as he then was) held that when the prosecuting officer gives the facts relating to the charge where the accused has pleaded guilty, the presiding Magistrate or judge should be vigilant to see that the facts make out the ingredients or elements relating to the charge and where the facts show that one or more of the essential requirements have not been made out, then notwithstanding the plea of guilty, the presiding officer should reject the plea and fix a date for evidence to be adduced.

[26] When the facts of case (P1) is examined, it is clear that they do not support the charge under s. 4 of the Act as framed in the amended charge. There are glaring contradictions between the charge and the facts of case. The charge stipulates that the time and place of offence is:

> ... 15/09/2015 jam lebih kurang 10.30 malam di tepi Lebuh AMJ berhampiran dengan hentian rehat dan rawatan Rembia, Alor Gajah, dalam Daerah Alor Gajah di dalam Negeri Melaka ...

Whereas, the facts of case (P1) states the date, time and place of the alleged offence as:

> Pada 28/1/2016 jam lebih kurang 7.00 pagi, semasa penama, Saravanan a/l Jayaram, sedang tidur di KM 670, Jalan Hospital Lama, Alor Gajah, ... tertuduh telah kembali ... sekitar jam 12.00 tengahari ...

A Clearly, the facts of case are in relation to the charge under s. 436 of the Penal Code (Arrest Case No: 62-01-02-2016) which reads as follows:

> Bahawa kamu pada 28.01.2016 antara jam 1200 tengahari hingga 1230 tengahari semasa di rumah KM 682, Jalan Hospital Lama, 78000 Alor Gajah, Melaka telah mendatangkan kemusnahan terhadap harta benda
B milik Sivabalan a/l Karunakaran No. KPT: 910729075801, dengan cara membaling bahan terbakar iaitu Molotov Koktail ke arah rumah, oleh yang demikian kamu telah melakukan kesalahan di bawah seksyen 436 Kanun Keseksaan dan dihukum di bawah seksyen yang sama.

[27] In fact the entirety of the facts of case (P1) refers to the charge under
C s. 436 of the Penal Code (Arrest Case No: 62-01-02-2016) and is absolutely unconnected to the charge under s. 4 of the Act (Arrest Case No: 62-02-02-2016). In the circumstances, the learned Sessions Judge ought to have rejected the plea of guilty and proceed to set the matter down for trial so that evidence may be adduced.

D **[28]** The acceptance of the plea of guilty under such circumstances would amount to a failure of justice, and this court in exercise of its revisionary powers must set aside the conviction and sentence and order a retrial. Thus, for this reason too, I set aside the conviction and sentence and order a retrial.

Orders accordingly.

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